

Fred I. Lewis  
Texans Together  
4509 Edgemont Drive  
Austin, TX 78731

Dear Mr. Lewis,

Thank you for your letter dated May 6, 2014, regarding the San Jacinto River Waste Pits Superfund Site ("Site"), in which you requested that the Environmental Protection Agency ("EPA") Office of Inspector General ("OIG") conduct an investigation, and that the EPA disregard the Remedial Investigation and Feasibility Study ("RI/FS") reports prepared by contractors engaged by the Potentially Responsible Parties ("PRPs") because the PRPs' consultant prejudged the alternative remedies, and appeared to fail to satisfy EPA's regulations and policies on conflicts of interest.

The RI/FS at the Site is being performed under the terms of a Unilateral Administrative Order (U.S. EPA Region 6, CERCLA Docket No. 06-03-10) issued by the EPA on November 20, 2009. Sections 104 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") provide that PRPs may conduct RI/FSs at Superfund sites. It is the EPA's commitment that those responsible for hazardous waste sites should perform the cleanup throughout the Superfund cleanup process, where appropriate, including conduct of the RI/FS (EPA, OSWER 9355.2-21, 2005).

The EPA's experience has shown that, with adequate oversight, PRPs and their consultants can perform acceptable RI/FSs. At this Site, oversight is being performed not only by EPA, but also by the Texas Commission on Environmental Quality (TCEQ), Harris County, the Port of Houston Authority, and the Natural Resource Trustees. While the EPA understands your concerns regarding the RI/FS, the draft RI/FS reports submitted by the PRPs are part of the Superfund site investigation process and are subject to the oversight and review of the EPA and these other agencies. The reports cannot be finalized until approved by EPA, and this requires that the PRPs' contractor make all modifications and/or revisions identified by EPA as necessary to complete the work. The EPA, therefore, will rely on both documents, once they have been approved by EPA, as it makes its final remedy decision.

The final selection of the remedial action will be made by the EPA and documented in a Record of Decision. The selection is based on EPA's consideration of nine CERCLA criteria, including overall protection of human health and the environment; compliance with applicable or relevant and appropriate standards; long-term effectiveness and permanence; reduction of toxicity, mobility or volume; short-term effectiveness; implementability; cost; state acceptance; and community acceptance. The EPA also makes the remedy decision in consultation with the TCEQ and the Natural Resource Trustees, and in consideration of public comments received on the proposed remedial action. The PRPs' consultant does not select the remedial action for a site. Any recommendations by the PRPs regarding the remedial action will be given due consideration during the public comment period, as any other comment from the public will be considered.

Finally, regarding conflicts of interest, the PRPs are using consultants in the performance of the RI/FS for the Site, as is typical at sites where PRPs perform Superfund response actions. The EPA position regarding use of consultants by PRPs is included in “Revisions to the Interim Guidance on PRP Participation in Remedial Investigations and Feasibility Studies”, OSWER Directive 9835.2A, February 7, 1989, page A-15, which states that “any consultants having current EPA assignments as prime contractors or as subcontractors must obtain approval from their EPA Contract Officers before performing work for PRPs.” This provision addresses a consultant’s potential conflict of interest regarding work for both the EPA and the PRP. Likewise, the Congress’ Office of Technology Assessment (OTA) report referenced in your letter, “Contractor Use in Superfund” (OTA January 1989), page 35 – 36, discusses “contracting by the Superfund program” and potential conflicts regarding use of a contractor by both EPA and a PRP. The conflict of interest rules for contractors at Superfund sites address government contractors that also perform work for PRPs at sites, not contractors working only for PRPs at a site, and, therefore, do not apply in this situation. Any consultant employed by a PRP is not expected to be independent of the PRP as they are paid by the PRP; however, regulatory oversight and acceptance of the work will ensure the adequacy of the RI/FS.

We appreciate your interest in the Site, and hope that this letter helps to address your concerns. Your May 6, 2014, letter was also addressed to the EPA OIG, and that office may respond to your request for an investigation separately.

Sincerely,

Carlos Sanchez  
Section Chief  
Arkansas/Texas Section (6SF-RA)

cc: EPA OIG